

**REMARKS/ARGUMENT****Regarding the Claims in General:**

By the proposed amendments, claims 2-4, and 7-19 would be present in the application. Claims 1 and 6 would be canceled without prejudice and rewritten as new claims 16 and 17, respectively, and claims 2, 3, 7, 10, and 13-15 would be amended. The amendments are intended to better highlight the distinguishing features of the invention, to improve the form of the claims in certain respects, and to conform to changes in new claims 16 and 17.

New dependent claims 18 and 19 have been added to provide application with additional protection to which he appears to be entitled in view of the known prior art.

Claim 5 would be canceled without prejudice to overcome the double patenting rejection.

It is respectfully submitted that new base claim 16 recites no new limitations or elements, but only better highlights features previously recited. Thus, the proposed changes would not require a new search, or otherwise raise new issues, and would place the application in condition for allowance, or in better condition for appeal.

**Regarding the Prior Art Rejections:**

In the outstanding Office Action, claims 1, 2, 5-8, 14 and 15 were rejected under 35 U.S.C. 102(b) as being anticipated by Bennett et al. U.S. Patent 973,847 and by Hertzberg U.S. Patent 1,735,278. Also, claims 1-8 and 13-14 were rejected under 35 U.S.C. 102(b) as being anticipated by Smith U.S. Patent 781,917. Further, claims 9-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett or Hertzberg or Smith.

It is respectfully submitted that these rejections are not applicable to the claims as amended. Reconsideration and withdrawal of the rejections are accordingly respectfully requested.

Claim 16, as amended herein is directed to a culinary whisk. Only Smith meets this limitation, which correlates with the structure of the utility portion recited in the body of the claim as described below. The other references, Bennett and Hertzberg, are directed respectively to a carpet beater and a mop. Even apart from this, however, claim 16 is not anticipated by any of the references.

In particular, claim 16 calls for:

an elongated handle;

a generally planar utility portion at one end of the handle configured and constructed to aerate a foodstuff; and

a crosspiece extending generally transversely relative to the handle,

wherein the cross piece is connected to both the utility portion and the handle in such a manner that the utility portion and the handle are pivotally movable relative to each other about the crosspiece.

With respect to Bennett, this can legitimately be described as having a generally planar utility portion at one end of the handle, but it has no crosspiece extending generally transversely relative to the handle by which the handle and the utility portion are pivotally connected. Nor is its utility portion configured and constructed to aerate a foodstuff.

With respect to Smith, the utility portion is configured and constructed to aerate a foodstuff, but, like Bennett, it lacks a crosspiece extending generally transversely relative to the handle by which the handle and the utility portion are pivotally connected.

Further, in Smith, the utility portion is formed by a pair of spaced cylindrical coils, and is therefore not generally planar.

Hertzberg is the only reference which discloses a crosspiece by which the handle and the utility portion are pivotally connected, but it fails to anticipate claim 16 in all other respects. Its utility portion is a mass of cloth strips, and is not generally planar. Nor is it configured and constructed to aerate a foodstuff.

For these reasons, claim 16 is not anticipated by any of the references, and should be allowed.

Claims 2-4, 7-15, and 17-19 are dependent on allowable claim 16, and are therefore allowable for the reasons stated above. In addition, these claims recite features which, in combination with the features of their respective parent claims are neither taught nor suggested in any of the references, whether considered alone, or in combination.

**Regarding References Cited in the Accompanying Information Disclosure Statement:**

The references cited by the accompanying IDS have been considered, but the present claims are not anticipated or rendered obvious by any of these references.

In view of the foregoing, entry of this amendment, favorable reconsideration and allowance of this application are respectfully solicited.

I hereby certify that this correspondence is being transmitted by Facsimile to (571) 273-8300 addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Respectfully submitted,

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December 2, 2005  
Date of Signature

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